

## BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

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3  
4 In the Matter of )  
5 )  
6 Lopito, Ileana, and Howie, Inc.; )  
7 Carlos Rodriguez; )  
8 Comité Acevedo Vilá Comisionado 2000, Inc.; ) MUR 5069  
9 Ramón Velasco, as treasurer; ) MUR 5132  
10 Aníbal Acevedo Vilá; )  
11 Jose Rodriguez Amoros )  
12  
13

## GENERAL COUNSEL'S REPORT #2

16 I. ACTIONS RECOMMENDED

17 Take no further action against Lopito, Ileana, and Howie, Inc., and Carlos Rodriguez  
18 President (collectively "LIH"); take no further action against Comité Acevedo Vilá  
19 Comisionado 2000, Inc. and Ramón Velasco, as treasurer, and Aníbal Acevedo Vilá  
20 (collectively "the Committee"); find no reason to believe that Jose Rodriguez Amoros violated  
21 the Act with regard to the allegations of the complaints in this matter; approve the appropriate  
22 letters; and close the files.

23 II. BACKGROUND

24 On June 10, 1999, Aníbal Acevedo Vilá became a candidate for the Democratic  
25 nomination for the office of Resident Commissioner of the Commonwealth of Puerto Rico.  
26 Acevedo Vilá won the primary election on November 14, 1999, and ultimately won the general  
27 election in November 2000. Comité Acevedo Vilá Comisionado 2000, Inc. was Acevedo  
28 Vilá's principal campaign committee during his primary and general election campaigns.  
29 These matters were generated by two separate complaints filed against LIH, the  
30 Committee, and an individual named Jose Rodriguez Amoros, alleging that a debt incurred by  
31 the Committee was an impermissible corporate contribution to the Committee from LIH. See 2

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FEDERAL ELECTION COMMISSION  
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NOTES

1 U.S.C. § 441b(a). Specifically, during Acevedo Vilá's primary campaign, the Committee  
2 incurred a debt with LIH for media and advertisement costs in the amount of \$655,896.39. *See*  
3 Committee 1999 Year-End Report, Schedule D, as amended. Over a year after the debt was  
4 initially incurred, the Committee disclosed in its 2000 Year-End Report that \$340,568.71 of the  
5 Committee's debt with LIH remained outstanding.

6 On September 25, 2001, the Commission found reason to believe that LIH and the  
7 Committee each violated 2 U.S.C. § 441b(a) by making and receiving, respectively, a  
8 corporate contribution in connection with the outstanding debt.<sup>1</sup> The Commission approved  
9 subpoenas and issued Orders to Submit Written Answers to LIH and the Committee. Due to a  
10 lack of information regarding the role of Respondent Jose-Rodríguez Amoros, the Commission  
11 took no action against him at that time.

12 In late 2001 and early 2002, the Committee and LIH submitted separate responses to  
13 the Commission's reason to believe findings, to the subpoenas, and to the Orders to Submit  
14 Written Answers. The responses are substantially similar in content and attach many of the  
15 same materials, including sworn affidavits, public campaign records from the State Elections  
16 Commission of the Commonwealth of Puerto Rico, contracts, and advertising agency policy  
17 statements. *See* Attachs. 3 and 4.

18 On July 8, 2002, LIH submitted an executed payment plan by which the Committee  
19 agreed to pay its remaining debt with interest by December 31, 2002. *See* Attach. 1. On

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<sup>1</sup> The Commission found "no reason to believe" with respect to additional allegations contained in the complaint. Specifically, the complaint also alleged that the Committee failed to report certain distributions for payroll taxes paid for campaign workers, or alternatively, that the Committee violated Puerto Rican wage and hour laws by failing to pay the payroll taxes. In addition, the complaint alleged that the Committee failed to report any expenditures for development of the Committee's website. *See* First General Counsel's Report, MURs 5069 and 5132 at 13-16.

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1 January 17, 2003, counsel for LIH notified this Office that the Committee had fully paid the  
2 outstanding debt to LIH, per the agreement between LIH and the Committee. See Attach. 2.  
3 The Committee's 2002 Year-End Report also indicates that the Committee paid the remaining  
4 debt in full on December 31, 2002.

5 On March 21, 2003 and April 8, 2003, LIH and the Committee, respectively, submitted  
6 additional discovery in response to supplemental requests made by this Office. See Attachs. 5  
7 and 6. These submissions provided significant additional details regarding LIH's efforts to  
8 collect the debt and the Committee's subsequent repayment of the debt, with interest.

9 III. ANALYSIS

10 The Commission's reason to believe findings in this case were based on two alternative  
11 theories. First, the original extension of credit was a contribution because it was not extended  
12 in LIH's "ordinary course of business" and on terms "substantially similar to extensions of  
13 credit to nonpolitical debtors that are of similar risk and size of obligation." 11 C.F.R. §  
14 100.7(a)(4); see Factual and Legal Analysis to LIH, MURs 5069 and 5132 at 6-8.  
15 Alternatively, even if the original extension of credit did not constitute a contribution from LIH  
16 at the time it was made, a contribution resulted because LIH did not engage in a "commercially  
17 reasonable attempt to collect the debt." 11 C.F.R. § 100.7(a)(4); see Factual and Legal  
18 Analysis to LIH, MURs 5069 and 5132 at 8-10. This Office has evaluated the evidence  
19 submitted by Respondents to support their claim that the extension of credit by LIH was  
20 neither a contribution to the Committee, nor subsequently became a contribution. The  
21 additional evidence provided by Respondents in the course of the investigation, which is

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1 substantially more detailed than what was submitted in response to the complaints, supports  
2 Respondents' position.

3           A.     Original Extension of Credit

4           The extension of credit by LIH would be a contribution unless it was made in the  
5 ordinary course of its business and the terms were substantially similar to those extended to  
6 nonpolitical debtors that are of similar risk and size of obligation. *See* 11 C.F.R. § 100.7(a)(4);  
7 *see also* 11 C.F.R. § 116.3(a). Respondents assert that "LIH's extension of credit to the  
8 Committee was in its ordinary course of business and on substantially similar terms and  
9 conditions as to other similarly situated nonpolitical clients." Attach. 3 at 5; *see* Attach. 4 at 6.

10           The facts available prior to the reason to believe findings in this matter "suggest[ed]  
11 that the extension of credit . . . was not in LIH's ordinary course of business, nor was it on  
12 terms substantially similar to extensions of credit to nonpolitical debtors." First General  
13 Counsel's Report, MURs 5069 and 5132 at 9. However, the information received during the  
14 investigation supports the contention that LIH's extension of credit was in LIH's ordinary  
15 course of business and was on terms substantially similar to its extension of credit to non-  
16 political debtors.

17                   1. Ordinary Course of LIH's Business

18           An analysis of whether credit was extended by an incorporated vendor in the ordinary  
19 course of business requires an examination of the vendor's established and past practice in  
20 approving credit, the usual and normal practice in the vendor's industry, and whether the  
21 vendor received prompt payments in the past from the candidate or the candidate's authorized  
22 committee. *See* 11 C.F.R. § 116.3(c). As noted in the First General Counsel's Report, the

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1 three factors which suggested that the extension of credit was not in LIH's ordinary course of  
2 business were: (1) that the record contained conflicting information as to whether it is the usual  
3 and normal industry practice for advertising agencies to advance the money for media buys to  
4 campaigns, as it had to the Committee,<sup>2</sup> (2) that there did not appear to be a written instrument  
5 memorializing credit terms, nor were any specific terms of credit given, and (3) that evidence  
6 of earlier transactions with Acevedo Vilá were not substantially similar as to provide a positive  
7 enough credit rating which would make the extension of credit in the ordinary course of LIH's  
8 business. See First General Counsel's Report, MURs 5069 and 5132 at 9-12. However, as set  
9 forth below, the evidence submitted by the Respondents during the investigation resolves each  
10 of these three issues and supports the claim that LIH's original extension of credit to the  
11 Committee was in its ordinary course of business.

12 First, both the Committee and LIH have submitted credible evidence that it is the usual  
13 and normal practice for advertising agencies in Puerto Rico to pay media outlets for  
14 media time in advance and bill the clients later, thereby assuming the risk of nonpayment.<sup>3</sup> See  
15 Attach. 3 at 6, Attach. 4 at 2. Specifically, Respondents each submitted sworn statements of  
16 two LIH officers and two officers of competing advertising agencies which assert that, in  
17 Puerto Rico, "the media is paid in a timely fashion regardless of whether payment for said  
18 media time has been received from the client." Attach. 3 at 10-11; see Attach. 3, Exs. E, F, I

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<sup>2</sup> This issue arose in the MUR 5069 complaint which alleged that the media consulting industry ordinarily requires political campaigns to pay the full cost of their advertising, including media time, in advance. See Compl., MUR 5069 at 2. Respondents disagreed, arguing that the ordinary course of business for advertising agencies in Puerto Rico is for advertising agencies to pay for their clients' media time and bill clients later. See Attach. 3 at 3, Attach. 4 at 3-4.

<sup>3</sup> The Committee argues that the practice of advertising agencies advancing large sums to candidates for media buys is so widespread in Puerto Rico that it has become a public policy issue. It refers to a newspaper article, a copy of which it has provided, which indicates that the Puerto Rico Government Ethics Office is entertaining a proposal to regulate the practice "because of potential conflicts of interests." Attach. 4 at 4.

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1 and J. LIH President, Carlos Rodriguez and LIH Finance Director, Noemí Díaz-Torres each  
2 state that "LIH pays the media time up-front for all of its political campaign clients, and then  
3 bills said clients, because the media in Puerto Rico requires advance payment of media time  
4 from political campaigns." Attach. 5, Ex. E at ¶ 5, Attach. 5, Ex. F at ¶ 5. Also, Edgardo  
5 Rivera, President of EJE Sociedad Publicitaria, and Hostos M. Gallardo, Executive Vice  
6 President of Rumbos-Comunicaciones, each attest that their respective San Juan-based  
7 advertising agencies "pay media time up-front for [their] clients, and then bill said clients,  
8 because the media in Puerto Rico requires advance payment of media time for political  
9 campaigns."<sup>4</sup> Attach. 3, Exs. I, J at ¶ 4.

10 LIH also argues that advertising agencies obtain a volume discount from the media  
11 outlets by providing payment in a timely manner, which explains, in part, the industry practice  
12 of paying for their clients' media time up front. See Attach. 3 at 10. LIH produced a Volume  
13 Discount Contract between itself and a television station which explained the volume discount  
14 incentives provided by the station to advertising agencies for timely payment of invoices for  
15 broadcast time. LIH also provided policy statements from the Puerto Rican newspaper "El  
16 Nuevo Día" and the Telemundo television station which state that payments for political  
17 advertisements "must be made in advance by certified check." The foregoing information,  
18 discovered in the course of the investigation, supports the Respondents' earlier assertion that it

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<sup>4</sup> LIH also produced documents, filed with the State Elections Commission of the Commonwealth of Puerto Rico, which show that Complainant Cintrón-García's own campaign committee made no payments directly to any media outlets but expended over \$300,000 to advertising agencies. LIH argues that this proves that the Cintrón-García campaign received advances from its advertising agency for media time used by the campaign, rather than paying the media outlets directly. See Attach. 3 at 7. LIH also argues that Complainant Cintrón-García's own party, the New Progressive Party, incurred debts of over \$2,000,000 with advertising agencies during campaigns in 1998 and 2000. See Attach. 4 at 3, Attach. 3 at 7-8. Finally, LIH produced an FEC Disclosure Report for Comité Jose Hernandez-Mayoral Comisionado Residente, Inc., the principal campaign committee for Acevedo Vilá's 1999 primary opponent, which reflects a debt of more than \$690,000 to an advertising agency.

1 is normal industry practice in Puerto Rico for advertising firms to pay for their clients' media  
2 time up front and assume the risk of nonpayment.

3 Second, although LIH did not execute a written instrument memorializing the terms of  
4 its extension of credit to the Committee, the evidence submitted by LIH indicates that it is not  
5 LIH's established practice to execute written agreements with its customers. *See* 11 C.F.R. §  
6 116.3(c). The First General Counsel's Report notes that LIH did not establish any terms for  
7 the extension of the credit and that, "[f]or a debt of this magnitude, over \$650,000, the absence  
8 of reference to [written instruments memorializing the terms of the extension of the credit] is  
9 conspicuous." First General Counsel's Report, MURs 5069 and 5132 at 10. However, the  
10 Committee states that invoices issued by LIH for services rendered are generally the only  
11 written instrument LIH uses in all of its transactions unless a "settlement concerning payment  
12 arises." Attach. 4 at 6. Furthermore, several invoices from LIH to the Committee specifically  
13 state that payment was due 30 days after the date of the invoice.

14 LIH refers to the sworn statement of LIH President, Carlos Rodríguez to substantiate  
15 the claim that the absence of a written payment agreement is not contrary to its usual course of  
16 business. Rodríguez asserts, "in fact, it is not in the ordinary course of LIH's business to have  
17 written contracts with its clients; of LIH's thirty-eight (38) clients, only eight (8) have written  
18 agreements, all at the behest of the client." Attach. 3 at 13 (emphasis in original). LIH also  
19 provides a corroborating statement from LIH Finance Director Noemí Díaz-Torres, which  
20 asserts that LIH does not normally execute written agreements for services. *See* Attach. 3, Ex.  
21 F at ¶ 8. In addition, while there was dispute as to the schedule for making payments and the  
22 interest due for late payments (see discussion below), both LIH and the Committee assert that

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1 "there was a mutual understanding that all of the amounts invoiced by LIH to the Committee  
2 would be fully paid." Attach. 4 at 6, Attach. 6 at 2; *see* Attach. 5, Ex. E at ¶ 11.

3 Third, Respondents submitted evidence regarding Acevedo Vilá's prior payment  
4 history with LIH to support their claim that LIH's extension of credit to the Committee was in  
5 its ordinary course of business. Respondents point to two prior transactions which occurred  
6 between LIH and Acevedo Vilá, dating back to when Acevedo Vilá was chairman of a political  
7 party committee in Puerto Rico. While LIH concedes that the circumstances of the past  
8 dealings are not identical, they argue that the past dealings provide some objective basis for the  
9 Committee's credit-worthiness and the reasonableness of the credit arrangement. *See* Attach. 3  
10 at 13. Although these two dealings are too dissimilar to support the Respondents' assertion,  
11 *see* First General Counsel's Report. MURs 5069 and 5132 at 10-11, LIH now also presents  
12 evidence to show that in November 1999, at the time it made its largest extension of credit to  
13 the Committee, LIH had already made earlier, lesser extensions of credit to the Committee that  
14 were being repaid (i.e., at that time) in a "satisfactory fashion." Attach. 3 at 14; *see* Attach. 5,  
15 Ex. E at ¶ 19. Specifically, both parties submit evidence that, prior to the primary election,  
16 between September and November 1999, the Committee met regularly with LIH regarding  
17 payment of invoices from LIH to the Committee and that the Committee paid these invoices  
18 "as or shortly after they became due." Attach. 6 at 2. The foregoing supports Respondents'  
19 assertion that it is not LIH's ordinary course of business to have written instruments  
20 memorializing specific terms of credit extended to its customers.

21 This information, in the aggregate, supports the conclusion that LIH acted in its  
22 ordinary course of business when it extended credit to the Committee for advertising services.

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1 However, LIH must also demonstrate that terms of its extensions of credit to its political clients  
2 is substantially similar to its nonpolitical clients.

3 **2. Substantially Similar to Nonpolitical Debtor**

4 LIH's extension of credit to the Committee is a contribution unless it is extended on  
5 terms "substantially similar to terms extended to nonpolitical debtors that are of similar risk  
6 and size of obligation." 11 C.F.R. § 100.7(a)(4). Both LIH and the Committee assert that the  
7 terms of the credit extended to the Committee are substantially similar to the terms of credit  
8 extended to nonpolitical debtors that are of similar risk and size of obligation. To support this  
9 position, each Respondent points to the sworn statements of LIH's President, Rodríguez and  
10 LIH's Finance Director, Díaz-Torres. *See* Attach. 3 at 10. Specifically, Rodríguez and Díaz-  
11 Torres state that "LIH engages in a substantially similar practice with its non-political clients,"  
12 including its practice of upfront payment of media time for its clients with an assumption of the  
13 risk of nonpayment.<sup>5</sup> Attach. 3, Exs. E and F at ¶ 6.

14 Furthermore, LIH submitted copies of invoices sent to two of its nonpolitical clients  
15 which request that those clients make repayments for media time that LIH had paid up front on  
16 their behalf. *See* Attach. 3 at 9. LIH also points to the sworn statements of Rivera and  
17 Gallardo, officers of advertising agencies that are not party to these matters. Rivera, President  
18 of EJE Sociedad Publicitaria, states: "As is also the standard practice in Puerto Rico EJE  
19 Sociedad Publicitaria ordinarily also pays media time up-front for its non political clients since  
20 the media is paid by EJE Sociedad Publicitaria, regardless of whether it has received payment

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<sup>5</sup> With regard to the lack of written documentation of a service agreement or terms for debt repayment, Respondents reiterate that of 38 total clients, including political and nonpolitical, only eight have written agreements, and those eight agreements were memorialized in writing at the behest of those eight clients. *See* Attach. 5, Exs. E and F at ¶ 8.

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1 for said media time from the non political client." Attach. 3., Ex. I. at ¶ 5. Gallardo, Executive  
2 Vice-President of Rumbos-Comunicaciones Integradas, Inc. repeats this claim in his sworn  
3 statement. See Attach. 3., Ex. J. at ¶ 5.

4 In short, Respondents have made a sufficient showing that LIH's extension of credit to  
5 the Committee was conducted in its ordinary course of business and on terms that were  
6 substantially similar to those extended to their non-political clients. As a result, this Office  
7 recommends that the Commission take no further action in connection with LIH's original  
8 extension of credit to the Committee.

9 B. Collection of the Debt

10 LIH could also have made a contribution to the Committee by failing to make a  
11 commercially reasonable attempt to collect the debt. See 11 C.F.R. § 100.7(a)(4). Attempts to  
12 collect a debt are commercially reasonable if the vendor has pursued its remedies as vigorously  
13 as it would pursue its remedies against a nonpolitical debtor in similar circumstances.<sup>6</sup> See 11  
14 C.F.R. § 116.4(d)(3). In this case, LIH's efforts to collect its debt from the Committee  
15 consisted mostly of oral and written requests for payment, although LIH eventually threatened  
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<sup>6</sup> Such remedies include oral and written requests for payment, withholding delivery of additional services until the debts are satisfied, imposition of additional charges or penalties for late payments, and referral of overdue debts to a commercial debt collection service. See 11 C.F.R. § 116.4(d)(3).

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litigation against the Committee.<sup>7</sup> Based on the information discovered in the course of the investigation, and recognizing that LIH collected the full amount of debt, with interest, it appears that LIH's efforts to collect the debt from the Committee were reasonable.

#### 1. Oral and Written Requests for Payment

LIH concedes that no concrete repayment schedule, especially one reduced to writing, initially existed between itself and the Committee. Attach. 3 at 19. However, LIH contends that it had a verbal agreement with the Committee that the debt would be repaid by February 28, 2000 and that interest would be charged on any outstanding balance after that date.<sup>8</sup> *Id.* at 20. LIH argues that they made numerous verbal and written requests for payment from the Committee. *Id.* at 17. Although there is little documentary evidence of LIH's demands for payment of the outstanding debt in the year 2000, Díaz and Rodríguez each claim in their sworn statements that LIH held numerous scheduled and unscheduled meetings with the Committee regarding repayment of the debt, made numerous telephone calls requesting payment, and had their attorney make repeated written and verbal requests for payment. See Attach. 3, Exs. E and F at ¶ 9; see also Attach. 6, Exs. A and B.

<sup>7</sup> Although LIH provided no additional services to the Committee after the primary election, there is no evidence that it withheld services from the Committee as a means of demanding payment for the outstanding debt. Additionally, there is no evidence that LIH engaged the services of a collection agency to collect the Committee's debt. However, the evidence submitted by LIH indicates that the company's Finance Director engaged in the same type of activities that a debt collection agency would, e.g. numerous phone calls, meetings and demand for payment. In fact, it appears as if LIH's efforts at collection through early 2001 were at least as successful as a debt collection agency's efforts would have been, since the Committee was making periodic payments through February 2001.

<sup>8</sup> LIH explains that interest was not charged after February 28, 2000 because the Committee's Treasurer informed LIH that charging interest "would constitute an illegal loan under federal campaign laws." Attach. 3. at 21. The Committee argues that it never entered into an agreement to pay the entirety of the invoices by February 28, 2000. See Attach. 6 at 3. In addition, the Committee states that it refused to pay interest on the outstanding debt based on its understanding that "LIH does not demand the payment of interest on unpaid invoices from its clients, political and non-political, and there was no reason why the Committee should be treated differently." Attach. 6 at 3. Nevertheless, the payment agreement entered into between LIH and the Committee on April 4, 2002 provides for the payment of \$35,000 of interest.

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1 Specifically, according to each statement, Díaz-Torres, scheduled at least 12 meetings  
2 with Acevedó Vilá and representatives of his Committee "to discuss and demand payment of  
3 their debt to LIH." Attach. 3 at 17; see Attach. 3, Exs. E and F at ¶ 9. Although a significant  
4 portion of the dates provided by LIH preceded the date on which the campaign incurred the  
5 bulk of the debt that gave rise to this matter, Díaz-Torres asserts that ordinarily the  
6 Committee's Treasurer, Velasco, made payments in person and she would demand payment on  
7 those occasions as well (11 payments were made in 2000 and 3 were made in 2001).<sup>9</sup>  
8 Furthermore, Díaz-Torres asserts that there were additional unscheduled meeting and telephone  
9 calls during which she demanded payment.

10 It appears that the nature and the intensity of LIH's demands for payments increased  
11 significantly after the Commission's reason to believe findings in these matters. It was not  
12 until after the Commission issued its reason to believe findings in these matters that LIH made  
13 repeated, persistent attempts, through their counsel, to actively execute a payment plan.  
14 Although LIH's most diligent—and most successful—efforts at collecting the debt came nearly  
15 two years after the debt was incurred by the Committee, LIH argues that this method of debt  
16 collection is reflective of the method it uses for its nonpolitical clients. Specifically, LIH states  
17 that it pursues all of its clients, political or nonpolitical, in a similar "informal and

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<sup>9</sup> The most significant portion of the debt incurred with LIH by the Acevedo-Vilá campaign, \$595,235.57, was invoiced on November 31, 1999. After that date, meetings were scheduled for December 21, 1999; December 28, 1999; January 1, 2000; January 11, 2000; August 14, 2000; and February 21, 2001. Payments were received on the following dates throughout the year 2000: February 29, April 4, May 2, May 11, June 5, August 14, August 31, September 25, October 9, November 27, December 29, and on February 21, 2001.

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1 non-confrontational" manner.<sup>10</sup> In addition, LIH was receiving steady series of small  
2 payments from the Committee through February 2001.

3 On March 20, 2001, LIH finally moved toward more formal collection efforts. LIH  
4 counsel called the Committee and requested full payment by December 31, 2002 and followed  
5 up this request with calls from LIH's counsel and President. At that time, the Committee's  
6 payments practically ceased. The Committee explains the decline in payments to LIH,  
7 "[d]uring the year 2000, the Committee made regular payments to LIH. However, recently  
8 there have been disagreements by and between LIH and the Committee as to what constitute  
9 reasonable terms to pay-said amounts." Attach. 4 at 6.

10 The Committee's decision to withhold payment, an apparent attempt to get LIH to  
11 forego its demand for interest, resulted in the Committee making only three payments to LIH  
12 throughout 2001, on February 21, June 29, and November 30. Although LIH sent a proposed  
13 payment plan to the Committee on May 20, 2001, it was not until February 18, 2002 that the  
14 Committee actively negotiated a repayment plan. Furthermore, it was not until April 4, 2002,  
15 that the Committee actually executed a repayment plan calling for full repayment of the debt,  
16 with interest, by December 31, 2002. Thus, LIH submitted overwhelming evidence of  
17 numerous demands directed to the Committee for payment of the debt, thereby providing  
18 convincing support for its assertion that it made commercially reasonable attempts to collect  
19 the Committee's debt. See 11 C.F.R. § 100.7(a)(4).

<sup>10</sup> To support this assertion, LIH provided details about the accounts of nonpolitical Clients "X" and "Y," who LIH asserts incurred debts of magnitudes similar to the Committee's and that LIH pursued collection in a manner consistent with its usual practice. See Attach. 3 at 18. LIH produced copies of the "Aged Balance Sheet" for the Committee and the "Aged Trial Balances" for Clients X and Y. These balance sheets show that, as of November 30, 1999, Client X had an outstanding balance of \$738,890.94, of which \$294,078.48 was 120 or more days overdue; and Client Y had outstanding debt of \$879,886.93, of which \$99,536.33 was 120 days or more overdue. *Id.*

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2. Threats of Litigation

LIH also threatened the Committee with litigation. At the time LIH filed its response to the Commission's reason to believe finding, it stated that it was contemplating a collection action against the Committee if negotiations failed to lead to a reasonable payment plan by the end of 2001.<sup>11</sup> Attach. 3 at 22-23. Subsequently, in December 2001 LIH did threaten the Committee with a lawsuit if it did not enter into a proposed payment plan by the end of the year. Rodriguez and Diaz met with an attorney whom they retained to initiate the suit; however, the lawsuit was not filed because the Committee agreed to enter into the payment plan before the end of the year. This threat was made despite LIH's longstanding policy of not suing clients for collection. *See id.* at 22.

In sum, although the Committee carried a substantial amount of debt for an extensive length of time, the evidence demonstrates that LIH repeatedly demanded payment and attempted to secure a payment agreement, including the provision of interest, despite the Committee's lack of cooperation. In addition, the fact that the Committee paid its debt in full, with interest, is a significant factor mitigating against taking further action in this matter.<sup>12</sup> As a result, this Office recommends that the Commission take no further action with regard to whether LIH's efforts to collect the Committee's debt were commercially reasonable, and close the files with regard to them.

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<sup>11</sup> The Committee's response to the reason to believe findings also referred, in much less detail, to these negotiations, to LIH's "multiple demands for repayment," and to LIH's threat of collection action. Attach. 4 at 6-7.

<sup>12</sup> *See* MUR 4742, In the Matter of Juan Vargas *et al.*, where the Commission rejected the General Counsel's recommendation to find probable cause to believe that a contribution resulted from a Committee's \$24,506.07 debt with a vendor which remained unpaid for three years and five months because, "the fact that the debt in question had been paid back in full...was a significant factor that mitigated against any further action." Vargas Statement of Reasons, dated November 8, 2000.

**C. Respondent Amoros**

Both complaints specify Mr. Amoros as a respondent, but neither complaint otherwise mentions him. On September 25, 2001, the Commission decided to "take no action at this time" with regard to Amoros and attempt to identify his role in the case through questions attached to the Orders to Submit Written Answers directed towards LIH, the Committee, and Acevedo Vilá.<sup>13</sup> The Committee's response to the order directed towards it identified Mr. Amoros as "a volunteer campaign scheduler in charge of the candidate's schedule," who also "executed miscellaneous tasks assigned to him from time to time as the need arose." LIH's subpoena response indicated that they did not know of Mr. Amoros.

Furthermore, on January 30, 2002, this Office sent a letter to Complainant Democratic Congressional Campaign Committee ("DCCC") requesting a more thorough basis for the complaint against Mr. Amoros. Counsel for the DCCC responded that the DCCC had no additional information to add to the complaint. Therefore, this Office does not have any information to indicate that Mr. Amoros was involved in the activities at issue in this matter. Accordingly, this Office recommends that the Commission find no reason to believe that Jose Rodriguez Amoros violated the Act and close the file with regard to him.

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<sup>13</sup> Specifically, the request asked each to "[i]dentify Jose Rodriguez Amoros and explain his relationship" to the candidate and the Committee.

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V. RECOMMENDATIONS

1. Take no further action against Lopito, Ileana, and Howie, Inc., and Carlos Rodriguez, President, and Comité Acevedo Vilá Comisionado 2000, Inc., and Ramón Velasco, as Treasurer, and Aníbal Acevedo Vilá.

2. Find no reason to believe that Jose Rodriguez Amoros violated the Act with regard to the allegations of the complaints in this matter.

3. Approve the appropriate letters.


4. Close the files.


Lawrence H. Norton  
General Counsel

Date

10/16/03

BY:

  
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Mark D. Shonkwiler  
Assistant General Counsel

  
Kathleen M. Dutt  
Attorney

23-04-406-2347



General Counsel's Report #2  
MURs 5069 and 5132

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Previously Assigned Staff: John Vergelli  
Tracy Robinson

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